LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

IMPROVING AMERICA'S SECURITY ACT OF 2007—Continued

AMENDMENT NO. 328, AS MODIFIED

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that amendment No. 328 be modified, with the changes at the desk.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment, as modified, is as follows:

(Purpose: To require Amtrak contacts and leases involving the State of Maryland to be governed by the laws of the District of Columbia)

On page 299, between lines 2 and 3, insert the following:

SEC. 1337. APPLICABILITY OF DISTRICT OF COLUMBIA LAW TO CERTAIN AMTRAK CONTRACTS.

Section 24301 of title 49, United States Code, is amended by adding at the end the following:

"(n) APPLICABILITY OF DISTRICT OF COLUMBIA LAW.—In the case of Maryland, any lease or contract entered into by the National Railroad Passenger Corporation after the date of the enactment of this subsection shall be governed by the laws of the District of Columbia.''.

Mr. LIEBERMAN. I thank the Chair, and I yield the floor.

Mr. COBURN. Mr. President, I ask that the pending amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 325 TO AMENDMENT NO. 275

Mr. COBURN. Mr. President, I call up amendment No. 325.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. COBURN] proposes an amendment numbered 325.

Mr. COBURN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To ensure the fiscal integrity of grants awarded by the Department of Homeland Security)

On page 106, preceding the matter on line 7, insert the following:

SEC. 204. COMPLIANCE WITH THE IMPROPER PAYMENTS INFORMATION ACT OF 2002.

(a) DEFINITIONS.—In this section, the term—

(1) "appropriate committees'' means—

(A) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(B) the Committee on Oversight and Government Reform of the House of Representatives; and

(2) "improper payment'' has the meaning given that term under section 2(d)(2) of the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note).

(b) REQUIREMENT FOR COMPLIANCE CERTIFICATION AND REPORT.—The Secretary shall not award any grants or distribute any grant funds under any grant program under this Act or an amendment made by this Act, until the Secretary submits a report to the appropriate committees that—

(1) contains a certification that the Department has for each program and activity of the Department—

(A) performed and completed a risk assessment to determine programs and activities that are at significant risk of making improper payments; and

(B) estimated the total number of improper payments for each program and activity determined to be at significant risk of making improper payments; and

(2) describes the actions to be taken to reduce improper payments for the programs and activities determined to be at significant risk of making improper payments.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, by our estimates, this bill is about $17-plus billion. As I said, it has not been scored. The House bill that will be merged with this in conference is over $20 billion. That is a large chunk of change for the American taxpayer. What we know is a lot of the grants which make up about $3-plus billion a year over the next 5 years of the vast majority of this bill will be homeland security grants of one type or another. What we know is the Department of Homeland Security has not followed the law when it comes to improper payments.

What the Improper Payments Act of 2002 required of every agency of the Federal Government was that they perform a risk assessment of every program they have, that they develop a statistically valid estimate of improper payments, that they develop a corrective action plan, and they report the results of those activities to us.

This is not an optional plan for the agencies. Yet this plan has been ignored since its inception and since the creation of the Department of Homeland Security. We are getting ready to send another $17- to $18 billion-plus out the door for homeland security grants—that is the majority of this— and we know the Department of Homeland Security is not in compliance with the Federal law.

The reason the law exists is to make sure we get good value for the taxpayers' money. The year 2004 was the first year the agencies were required to respond to this act. It is worth noting again that there is not an agency of the Federal Government, not one agency, that is exempt from this law. This is not a request. This is a statutory requirement of every agency.

The Department of Homeland Security has not even complied with the first step of this law. They have not performed risk assessments for the programs to be of significant risk of making improper payments. They are an at-risk program according to the analysis, yet they have not even looked to do a risk assessment. The Government Accountability Office has found at least six major programs at this Department are out of compliance with the Improper Payments Act. The Department of Homeland Security's independent auditor has repeatedly cited noncompliance, and the Department of Homeland Security continues to face significant challenges with FEMA and the Individual and Households Program.

Based upon the Department's performance and accountability report and their independent auditor assessment, the following programs are out of compliance with the improper payments act: Customs and Border Protection; Office of Grants and Training; Federal Air Marshals—the Coast Guard was supposed to have done a performance evaluation and risk assessment but it has not been done; FEMA; the Transportation Security Agency; and Immigration and Customs Enforcement. Not one of them has performed the first risk assessment as to improper payments.

In case you think that is not a lot of money, we have already spent over $25 billion in grants through the years for these programs, of which we have not looked at the problem accounts. The press is replete with problems in terms of these grants: $9 billion on State and local preparedness grants—that is what we get from DHS. Secretary Chertoff at the most recent hearing said $5 billion of the money, another $5 billion—part of which has been obligated but has not gone out the door yet.

I think we owe it to the American people, if there is a law on the books, before we send more money out the door the agency ought to comply with the law. They ought to at least do a risk assessment. If there is no risk, that is fine. Then they will have complied with the law. But if there is risk, we ought to be identifying the risk. Every dollar we spend wastefully is a dollar we don't use to protect ourselves in terms of our security.

KPMG was the independent auditor for 2004, 2005, and 2006 for the Department of Homeland Security. In each one of those years they were out of compliance with this act. Specifically, the Department is cited for not instituting a systematic method of reviewing all practices and identifying those believed to be susceptible to erroneous, improper payments. The most important part of the Improper Payments Act is to create the process of good, strong oversight within the Department to make assessments about whether they are making improper payments. What this assessment does is it identifies where those improper payments could have been made, and that is essential to find out where the problems exist.

This amendment does not debate any of the merits of the Department's programs. It simply demands compliance with the transparency and accountability measurements that already exist under current law. If we want the American people and the executive branch to take us seriously, Congress must demand compliance with the laws that are laws. We cannot back off.